

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 2333

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**Introduced by Assembly Member Achadjian**

February 18, 2016

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An act to amend Section ~~4030~~ 490.5 of the Penal Code, relating to ~~jails; theft.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2333, as amended, Achadjian. ~~Jails; searches. Theft of merchandise.~~

*Existing law makes petty theft involving merchandise taken from a merchant's premises punishable by a fine of not less than \$50 and not more than \$1,000, and imprisonment in the county jail not exceeding 6 months.*

*This bill would provide that nothing in that section or any other law precludes a merchant from offering a person suspected of theft an opportunity to complete a precomplaint diversion program in lieu of arrest and criminal prosecution, or informing a person suspected of theft of the criminal civil remedies available to the merchant.*

~~Existing law generally prohibits strip searches and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses. Existing law allows a person who has been arrested and taken into custody to be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 490.5 of the Penal Code is amended to  
2     read:

3     490.5. (a) Upon a first conviction for petty theft involving  
4     merchandise taken from a merchant's premises or a book or other  
5     library materials taken from a library facility, a person shall be  
6     punished by a mandatory fine of not less than fifty dollars (\$50)  
7     and not more than one thousand dollars (\$1,000) for each ~~such~~  
8     violation; and may also be punished by imprisonment in the county  
9     jail, not exceeding six months, or both ~~such that~~ fine and  
10    imprisonment.

11    (b) ~~When~~ *If* an unemancipated minor's willful conduct would  
12    constitute petty theft involving merchandise taken from a  
13    merchant's premises or a book or other library materials taken  
14    from a library facility, ~~any a~~ merchant or library facility ~~who that~~  
15    has been injured by that conduct may bring a civil action against  
16    the parent or legal guardian having control and custody of the  
17    minor. For the purposes of those actions the misconduct of the  
18    unemancipated minor shall be imputed to the parent or legal  
19    guardian having control and custody of the minor. The parent or  
20    legal guardian having control or custody of an unemancipated  
21    minor whose conduct violates this subdivision shall be jointly and  
22    severally liable with the minor to a merchant or to a library facility  
23    for damages of not less than fifty dollars (\$50) nor more than five  
24    hundred dollars (\$500), plus costs. In addition to the foregoing  
25    damages, the parent or legal guardian shall be jointly and severally  
26    liable with the minor to the merchant for the retail value of the  
27    merchandise if it is not recovered in a merchantable condition, or  
28    to a library facility for the fair market value of its book or other  
29    library materials. Recovery of these damages may be had in  
30    addition to, and is not limited by, any other provision of law which  
31    limits the liability of a parent or legal guardian for the tortious  
32    conduct of a minor. An action for recovery of damages, pursuant  
33    to this subdivision, may be brought in small claims court if the  
34    total damages do not exceed the jurisdictional limit of that court,  
35    or in any other appropriate court; however, total damages, including

1 the value of the merchandise or book or other library materials,  
2 shall not exceed five hundred dollars (\$500) for each action brought  
3 under this section.

4 The provisions of this subdivision are in addition to other civil  
5 remedies and do not limit merchants or other persons to elect to  
6 pursue other civil remedies, except that the provisions of Section  
7 1714.1 of the Civil Code shall not apply herein.

8 (c) ~~When~~ If an adult or emancipated minor has unlawfully taken  
9 merchandise from a merchant's premises, or a book or other library  
10 materials from a library facility, the adult or emancipated minor  
11 shall be liable to the merchant or library facility for damages of  
12 not less than fifty dollars (\$50) nor more than five hundred dollars  
13 (\$500), plus costs. In addition to the foregoing damages, the adult  
14 or emancipated minor shall be liable to the merchant for the retail  
15 value of the merchandise if it is not recovered in merchantable  
16 condition, or to a library facility for the fair market value of its  
17 book or other library materials. An action for recovery of damages,  
18 pursuant to this subdivision, may be brought in small claims court  
19 if the total damages do not exceed the jurisdictional limit of such  
20 court, or in any other appropriate court. The provisions of this  
21 subdivision are in addition to other civil remedies and do not limit  
22 merchants or other persons to elect to pursue other civil remedies.

23 (d) In lieu of the fines prescribed by subdivision (a), any person  
24 may be required to perform public services designated by the court,  
25 provided that in no event shall any ~~such~~ person be required to  
26 perform less than the number of hours of ~~such~~ public service  
27 necessary to satisfy the fine assessed by the court as provided by  
28 subdivision (a) at the minimum wage prevailing in the state at the  
29 time of sentencing.

30 (e) All fines collected under this section shall be collected and  
31 distributed in accordance with Sections 1463 and 1463.1 of the  
32 Penal Code; provided, however, that a county may, by a majority  
33 vote of the members of its board of supervisors, allocate any  
34 amount up to, but not exceeding 50 percent of such fines to the  
35 county superintendent of schools for allocation to local school  
36 districts. The fines allocated shall be administered by the county  
37 superintendent of schools to finance public school programs, which  
38 provide counseling or other educational services designed to  
39 discourage shoplifting, theft, and burglary. Subject to rules and  
40 regulations ~~as may~~ be adopted by the Superintendent of Public

1 Instruction, each county superintendent of schools shall allocate  
2 ~~such~~ funds to school districts within the county ~~which~~ *that* submit  
3 project applications designed to further the educational purposes  
4 of this section. The costs of administration of this section by each  
5 county superintendent of schools shall be paid from the funds  
6 allocated to the county superintendent of schools.

7 (f) (1) A merchant may detain a person for a reasonable time  
8 for the purpose of conducting an investigation in a reasonable  
9 manner whenever the merchant has probable cause to believe the  
10 person to be detained is attempting to unlawfully take or has  
11 unlawfully taken merchandise from the merchant's premises.

12 A theater owner may detain a person for a reasonable time for  
13 the purpose of conducting an investigation in a reasonable manner  
14 whenever the theater owner has probable cause to believe the  
15 person to be detained is attempting to operate a video recording  
16 device within the premises of a motion picture theater without the  
17 authority of the owner of the theater.

18 A person employed by a library facility may detain a person for  
19 a reasonable time for the purpose of conducting an investigation  
20 in a reasonable manner whenever the person employed by a library  
21 facility has probable cause to believe the person to be detained is  
22 attempting to unlawfully remove or has unlawfully removed books  
23 or library materials from the premises of the library facility.

24 (2) In making the detention a merchant, theater owner, or a  
25 person employed by a library facility may use a reasonable amount  
26 of nondeadly force necessary to protect himself or herself and to  
27 prevent escape of the person detained or the loss of tangible or  
28 intangible property.

29 (3) During the period of detention any items ~~which~~ *that* a  
30 merchant or theater owner, or any items ~~which~~ *that* a person  
31 employed by a library facility has probable cause to believe are  
32 unlawfully taken from the premises of the merchant or library  
33 facility, or recorded on theater premises, and ~~which~~ *that* are in  
34 plain view may be examined by the merchant, theater owner, or  
35 person employed by a library facility for the purposes of  
36 ascertaining the ownership thereof.

37 (4) A merchant, theater owner, a person employed by a library  
38 facility, or an agent thereof, having probable cause to believe the  
39 person detained was attempting to unlawfully take or has taken  
40 any item from the premises, or was attempting to operate a video

1 recording device within the premises of a motion picture theater  
2 without the authority of the owner of the theater, may request the  
3 person detained to voluntarily surrender the item or recording.  
4 Should the person detained refuse to surrender the recording or  
5 item of which there is probable cause to believe has been recorded  
6 on or unlawfully taken from the premises, or attempted to be  
7 recorded or unlawfully taken from the premises, a limited and  
8 reasonable search may be conducted by those authorized to make  
9 the detention in order to recover the item. Only packages, shopping  
10 bags, handbags or other property in the immediate possession of  
11 the person detained, but not including any clothing worn by the  
12 person, may be searched pursuant to this subdivision. Upon  
13 surrender or discovery of the item, the person detained may also  
14 be requested, but may not be required, to provide adequate proof  
15 of his or her true identity.

16 (5) If any person admitted to a theater in which a motion picture  
17 is to be or is being exhibited, refuses or fails to give or surrender  
18 possession or to cease operation of any video recording device  
19 that the person has brought into or attempts to bring into that  
20 theater, then a theater owner shall have the right to refuse admission  
21 to that person or request that the person leave the premises and  
22 shall thereupon offer to refund and, unless that offer is refused,  
23 refund to that person the price paid by that person for admission  
24 to that theater. If the person thereafter refuses to leave the theater  
25 or cease operation of the video recording device, then the person  
26 shall be deemed to be intentionally interfering with and obstructing  
27 those attempting to carry on a lawful business within the meaning  
28 of Section 602.1.

29 (6) A peace officer who accepts custody of a person arrested  
30 for an offense contained in this section may, subsequent to the  
31 arrest, search the person arrested and his or her immediate  
32 possessions for any item or items alleged to have been taken.

33 (7) In any civil action brought by any person resulting from a  
34 detention or arrest by a merchant, it shall be a defense to ~~such~~ *the*  
35 action that the merchant detaining or arresting ~~such~~ *the* person had  
36 probable cause to believe that the person had stolen or attempted  
37 to steal merchandise and that the merchant acted reasonably under  
38 all the circumstances.

39 In any civil action brought by any person resulting from a  
40 detention or arrest by a theater owner or person employed by a

1 library facility, it shall be a defense to that action that the theater  
2 owner or person employed by a library facility detaining or  
3 arresting that person had probable cause to believe that the person  
4 was attempting to operate a video recording device within the  
5 premises of a motion picture theater without the authority of the  
6 owner of the theater or had stolen or attempted to steal books or  
7 library materials and that the person employed by a library facility  
8 acted reasonably under all the circumstances.

9 (g) As used in this section:

10 (1) “Merchandise” means any personal property, capable of  
11 manual delivery, displayed, held or offered for retail sale by a  
12 merchant.

13 (2) “Merchant” means an owner or operator, and the agent,  
14 consignee, employee, lessee, or officer of an owner or operator,  
15 of any premises used for the retail purchase or sale of any personal  
16 property capable of manual delivery.

17 (3) “Theater owner” means an owner or operator, and the agent,  
18 employee, consignee, lessee, or officer of an owner or operator,  
19 of any premises used for the exhibition or performance of motion  
20 pictures to the general public.

21 (4) The terms “book or other library materials” include any  
22 book, plate, picture, photograph, engraving, painting, drawing,  
23 map, newspaper, magazine, pamphlet, broadside, manuscript,  
24 document, letter, public record, microform, sound recording,  
25 audiovisual material in any format, magnetic or other tape,  
26 electronic data-processing record, artifact, or other documentary,  
27 written or printed material regardless of physical form or  
28 characteristics, or any part thereof, belonging to, on loan to, or  
29 otherwise in the custody of a library facility.

30 (5) The term “library facility” includes any public library; any  
31 library of an educational, historical or eleemosynary institution,  
32 organization or society; any museum; any repository of public  
33 records.

34 (h) Any library facility shall post at its entrance and exit a  
35 conspicuous sign to read as follows:

36 “IN ORDER TO PREVENT THE THEFT OF BOOKS AND  
37 LIBRARY MATERIALS, STATE LAW AUTHORIZES THE  
38 DETENTION FOR A REASONABLE PERIOD OF ANY  
39 PERSON USING THESE FACILITIES SUSPECTED OF

1 COMMITTING “LIBRARY THEFT” (PENAL CODE SECTION  
2 490.5).”

3 *(i) Nothing in this section nor any other provision of law*  
4 *precludes a merchant from offering a person suspected of theft an*  
5 *opportunity to complete a precomplaint diversion program in lieu*  
6 *of arrest and criminal prosecution or precludes a merchant from*  
7 *informing a person suspected of theft of the criminal or civil*  
8 *remedies available to the merchant.*

9 ~~SECTION 1. Section 4030 of the Penal Code is amended to~~  
10 ~~read:~~

11 ~~4030. (a) (1) The Legislature finds and declares that law~~  
12 ~~enforcement policies and practices for conducting strip or body~~  
13 ~~cavity searches of detained persons vary widely throughout~~  
14 ~~California. Consequently, some people have been arbitrarily~~  
15 ~~subjected to unnecessary strip and body cavity searches after arrests~~  
16 ~~for minor misdemeanor and infraction offenses. Some present~~  
17 ~~search practices violate state and federal constitutional rights to~~  
18 ~~privacy and freedom from unreasonable searches and seizures.~~

19 ~~(2) It is the intent of the Legislature in enacting this section to~~  
20 ~~protect the state and federal constitutional rights of the people of~~  
21 ~~California by establishing a statewide policy strictly limiting strip~~  
22 ~~and body cavity searches.~~

23 ~~(b) The provisions of this section shall apply only to~~  
24 ~~prearrest detainees arrested for infraction or misdemeanor~~  
25 ~~offenses and to any minor detained prior to a detention hearing on~~  
26 ~~the grounds that he or she is a person described in Section 300,~~  
27 ~~601, or 602 of the Welfare and Institutions Code alleged to have~~  
28 ~~committed a misdemeanor or infraction offense. The provisions~~  
29 ~~of this section shall not apply to a person in the custody of the~~  
30 ~~Secretary of the Department of Corrections and Rehabilitation or~~  
31 ~~the Director of the Division of Juvenile Justice in the Department~~  
32 ~~of Corrections and Rehabilitation.~~

33 ~~(c) As used in this section, the following definitions shall apply:~~

34 ~~(1) “Body cavity” only means the stomach or rectal cavity of a~~  
35 ~~person, and vagina of a female person.~~

36 ~~(2) “Physical body cavity search” means physical intrusion into~~  
37 ~~a body cavity for the purpose of discovering any object concealed~~  
38 ~~in the body cavity.~~

39 ~~(3) “Strip search” means a search which requires a person to~~  
40 ~~remove or arrange some or all of his or her clothing so as to permit~~

1 a visual inspection of the underclothing, breasts, buttocks, or  
2 genitalia of that person.

3 (4) “Visual body cavity search” means visual inspection of a  
4 body cavity.

5 (d) Notwithstanding any other law, including Section 40304.5  
6 of the Vehicle Code, if a person is arrested and taken into custody,  
7 that person may be subjected to patdown searches, metal detector  
8 searches, and thorough clothing searches in order to discover and  
9 retrieve concealed weapons and contraband substances prior to  
10 being placed in a booking cell.

11 (e) A person who is arrested and held in custody on a  
12 misdemeanor or infraction offense, except those involving  
13 weapons, controlled substances, or violence, or a minor detained  
14 prior to a detention hearing on the grounds that he or she is a person  
15 described in Section 300, 601 or 602 of the Welfare and Institutions  
16 Code, except for those minors alleged to have committed felonies  
17 or offenses involving weapons, controlled substances, or violence,  
18 shall not be subjected to a strip search or visual body cavity search  
19 prior to placement in the general jail population, unless a peace  
20 officer has determined there is reasonable suspicion, based on  
21 specific and articulable facts, to believe that person is concealing  
22 a weapon or contraband, and a strip search will result in the  
23 discovery of the weapon or contraband. A strip search or visual  
24 body cavity search, or both, shall not be conducted without the  
25 prior written authorization of the supervising officer on duty. The  
26 authorization shall include the specific and articulable facts and  
27 circumstances upon which the reasonable suspicion determination  
28 was made by the supervisor.

29 (f) (1) Except pursuant to the provisions of paragraph (2), a  
30 person arrested and held in custody on a misdemeanor or infraction  
31 offense not involving weapons, controlled substances, or violence,  
32 shall not be confined in the general jail population unless all of  
33 the following are true:

34 (A) The person is not cited and released.

35 (B) The person is not released on his or her own recognizance  
36 pursuant to Article 9 (commencing with Section 1318) of Chapter  
37 1 of Title 10 of Part 2.

38 (C) The person is not able to post bail within a reasonable time,  
39 not less than three hours.



1     ~~(2) A person shall not be housed in the general jail population~~  
2 ~~prior to release pursuant to the provisions of paragraph (1) unless~~  
3 ~~a documented emergency exists and there is no reasonable~~  
4 ~~alternative to that placement. The person shall be placed in the~~  
5 ~~general population only upon prior written authorization~~  
6 ~~documenting the specific facts and circumstances of the emergency.~~  
7 ~~The written authorization shall be signed by the uniformed~~  
8 ~~supervisor of the facility or by a uniformed watch commander. A~~  
9 ~~person confined in the general jail population pursuant to paragraph~~  
10 ~~(1) shall retain all rights to release on citation, his or her own~~  
11 ~~recognizance, or bail that were preempted as a consequence of the~~  
12 ~~emergency.~~

13     ~~(g) A person who is arrested on a misdemeanor or infraction~~  
14 ~~offense, or a minor described in subdivision (b), shall not be~~  
15 ~~subjected to a physical body cavity search except under the~~  
16 ~~authority of a search warrant issued by a magistrate specifically~~  
17 ~~authorizing the physical body cavity search.~~

18     ~~(h) A copy of the prior written authorization required by~~  
19 ~~subdivisions (e) and (f) and the search warrant required by~~  
20 ~~subdivision (g) shall be placed in the agency's records and made~~  
21 ~~available, on request, to the person searched or his or her authorized~~  
22 ~~representative. With regard to a strip search or visual or physical~~  
23 ~~body cavity search, the time, date, and place of the search, the~~  
24 ~~name and sex of the person conducting the search, and a statement~~  
25 ~~of the results of the search, including a list of items removed from~~  
26 ~~the person searched, shall be recorded in the agency's records and~~  
27 ~~made available, upon request, to the person searched or his or her~~  
28 ~~authorized representative.~~

29     ~~(i) Persons conducting a strip search or a visual body cavity~~  
30 ~~search shall not touch the breasts, buttocks, or genitalia of the~~  
31 ~~person being searched.~~

32     ~~(j) A physical body cavity search shall be conducted under~~  
33 ~~sanitary conditions, and only by a physician, nurse practitioner,~~  
34 ~~registered nurse, licensed vocational nurse, or emergency medical~~  
35 ~~technician Level II licensed to practice in this state. A physician~~  
36 ~~engaged in providing health care to detainees and inmates of the~~  
37 ~~facility may conduct physical body cavity searches.~~

38     ~~(k) A person conducting or otherwise present or within sight of~~  
39 ~~the inmate during a strip search or visual or physical body cavity~~

1 search shall be of the same sex as the person being searched, except  
2 for physicians or licensed medical personnel.

3 ~~(l) All strip, visual, and physical body cavity searches shall be~~  
4 ~~conducted in an area of privacy so that the search cannot be~~  
5 ~~observed by persons not participating in the search. Persons are~~  
6 ~~considered to be participating in the search if their official duties~~  
7 ~~relative to search procedure require them to be present at the time~~  
8 ~~the search is conducted.~~

9 ~~(m) A person who knowingly and willfully authorizes or~~  
10 ~~conducts a strip search or visual or physical body cavity search in~~  
11 ~~violation of this section is guilty of a misdemeanor.~~

12 ~~(n) This section does not limit the common law or statutory~~  
13 ~~rights of a person regarding an action for damages or injunctive~~  
14 ~~relief, or preclude the prosecution under another law of a peace~~  
15 ~~officer or other person who has violated this section.~~

16 ~~(o) Any person who suffers damage or harm as a result of a~~  
17 ~~violation of this section may bring a civil action to recover actual~~  
18 ~~damages, or one thousand dollars (\$1,000), whichever is greater.~~  
19 ~~In addition, the court may, in its discretion, award punitive~~  
20 ~~damages, equitable relief as it deems necessary and proper, and~~  
21 ~~costs, including reasonable attorney's fees.~~